

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW JEROME MARQUEZ,  
Plaintiff,

v.

STATE OF CA DEPT. OF  
CORRECTIONS AND REHAB.,  
Defendant.

Case No. 20-01171 EJD (PR)

**ORDER OF DISMISSAL**

Plaintiff, a state prisoner at the Salinas Valley State Prison (“SVSP”), filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983. Dkt. No. 1. Plaintiff has paid the filing fee. Id.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune  
2 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
3 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff claims that he was unjustly found guilty of a Rules Violation Report  
10 because the Chief Disciplinary Officer, Lt. R. Martinez, who found him guilty was the  
11 same officer who issued the RVR. Dkt. No. 1 at 3. Plaintiff claims this violated his right  
12 to due process. Id. Plaintiff seeks the restoration of privileges and good time credits, as  
13 well as damages. Id.

14 “Federal law opens two main avenues to relief on complaints related to  
15 imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the  
16 Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to  
17 the lawfulness of confinement or to particulars affecting its duration are the province of  
18 habeas corpus.” Hill v. McDonough, 547 U.S. 573, 579 (2006) (quoting Muhammad v.  
19 Close, 540 U.S. 749, 750 (2004)). “An inmate’s challenge to the circumstances of his  
20 confinement, however, may be brought under § 1983.” Id.

21 Habeas is the “exclusive remedy” for the prisoner who seeks “‘immediate or  
22 speedier release’” from confinement. Skinner v. Switzer, 562 U.S. 521, 533-34 (2011)  
23 (quoting Wilkinson v. Dotson, 544 U.S. 74, 82 (2005)); see Calderon v. Ashmus, 523 U.S.  
24 740, 747 (1998); Edwards v. Balisok, 520 U.S. 641, 648 (1997); Preiser v. Rodriguez, 411  
25 U.S. 475, 500 (1973). “Where the prisoner’s claim would not ‘necessarily spell speedier  
26 release,’ however, suit may be brought under § 1983.” Skinner, 562 U.S. at 533-34  
27 (quoting Wilkinson, 544 U.S. at 82). But a challenge to a disciplinary finding that resulted  
28

1 in assessment of time credits must be brought in habeas if reinstatement of the time credits  
2 would “necessarily spell speedier release.” Id. at 525.

3 Here, Plaintiff is alleging a due process violation in connection with a disciplinary  
4 hearing that resulted in the revocation of good time credits. If he succeeds in this action  
5 and the good times credits are restored, that would “necessarily spell speedier release.” Id.  
6 Accordingly, this action should be brought as a petition for a writ of habeas corpus rather  
7 than a § 1983 action. Id.

8 Although a district court may construe a habeas petition by a prisoner attacking the  
9 conditions of his confinement as a civil rights action under 42 U.S.C. § 1983, see  
10 Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the opposite is not true: A civil rights  
11 complaint seeking habeas relief should be dismissed without prejudice to bringing it as a  
12 petition for writ of habeas corpus. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586  
13 (9th Cir. 1995). Accordingly, Plaintiff may seek relief for the alleged violation of due  
14 process in connection with his disciplinary hearing by filing a petition for a writ of habeas  
15 corpus pursuant to 28 U.S.C. § 2254.

16 Lastly, in order to recover damages for an allegedly unconstitutional conviction or  
17 imprisonment, or for other harm caused by actions whose unlawfulness would render a  
18 conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction  
19 or sentence has been reversed on direct appeal, expunged by executive order, declared  
20 invalid by a state tribunal authorized to make such determination, or called into question  
21 by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477,  
22 486-487 (1994). Heck also bars a claim of unconstitutional deprivation of time credits  
23 because such a claim necessarily calls into question the lawfulness of the plaintiff's  
24 continuing confinement, i.e., it implicates the duration of the plaintiff's sentence. See  
25 Sheldon v. Hundley, 83 F.3d 231, 233 (8th Cir. 1996). Accordingly, Plaintiff may only  
26 pursue a claim for damages in connection with the unlawful deprivation of time credits if  
27 he prevails on the habeas action challenging the revocation of those credits.

**CONCLUSION**

For the reasons set forth above, this action is DISMISSED without prejudice to filing as a new habeas action under 28 U.S.C. § 2254.

The Clerk shall enclose two copies of the court's form petition with a copy of this order to Plaintiff.

**IT IS SO ORDERED.**

**Dated:** 7/1/2020



EDWARD J. DAVILA  
United States District Judge

United States District Court  
Northern District of California